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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MANUEL LEYVA et al.,

Plaintiffs and Respondents,

v.

JULIO TRUJILLO,

Defendant and Appellant.

G039867

(Super. Ct. No. 05CC05495)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Thompson, Judge. Affirmed.

Demler, Armstrong & Rowland and James P. Lemieux for Defendant and Appellant.

Manuel Leyva, in pro. per., for Plaintiff and Respondent.

Julio Trujillo appeals from a judgment in favor of Manuel Leyva, Rebecca Leyva, and Chris Leyva (Leyva) in this wrongful death action, brought after Trujillo killed Leyva's mother when he lost control of his car in a Santa Ana street race. Trujillo argues punitive damages awarded Leyva must be reversed. We disagree and affirm.

### FACTS

On May 1, 2003, Trujillo raced his Ford Mustang against another automobile on busy Bristol Street in Santa Ana at 1:00 in the afternoon.<sup>1</sup> Weaving in and out of traffic at speeds over 80 miles an hour, he collided head-on with a Volkswagen Golf driven by Margaret Leyva. Margaret Leyva died on the spot from massive injuries. Trujillo was spared that fate by an airbag, emerging unscathed by his heinous conduct save for a broken ankle. He was convicted of vehicular manslaughter and incarcerated in state prison (as was the other driver).

Leyva brought this action in 2005. The complaint was served on Trujillo in prison, along with discovery. He defaulted. Trujillo's insurer learned of the default and retained counsel (James Lemieux of Demler, Armstrong & Rowland), who successfully moved to set aside the default. Settlement negotiations ensued.

In late September 2006, Lemieux met with Trujillo at the prison to discuss the possibility of settlement. A settlement offer was made in October 2006 and he sent it to Trujillo. In mid-October 2006, Lemieux learned Trujillo had been deported when his letter was returned. In a declaration, Lemieux said he had known in September 2006 it was possible Trujillo might be deported to El Salvador, but he believed no action would be taken without a hearing and Trujillo would remain in the United States at least through the end of 2006. Without a settlement, the case went ahead.

Leyva obtained leave to conduct discovery into Trujillo's financial condition, on the ground it was likely punitive damages would be awarded. No

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<sup>1</sup> The facts are those stipulated to by the parties, along with matters set out in Trujillo's motions for a new trial and/or to vacate the judgment. (Code Civ. Proc., §§ 657, 663.0.)

information was forthcoming. A motion to compel was granted, directing Trujillo to respond to the financial discovery along with outstanding requests for admissions and other discovery. Again, no response. This time, Leyva moved for issue sanctions for disobeying the discovery order, asking that he be allowed to recover punitive damages without offering the unproduced evidence of Trujillo's financial condition. Leyva also moved to strike Trujillo's answer and deem the requests for admissions as admitted. Counsel's position was, as it had been on all of the motions set out above, that he had been unable to locate Trujillo despite diligent efforts. The trial court denied the issue sanction but granted the other sanctions and struck Trujillo's answer.

At a prove-up hearing, the trial court found Trujillo had acted with oppression, malice, and willful disregard for the safety of others. As stipulated to by the parties, it awarded Leyva compensatory damages of \$760,960.69 (\$500,000 general damages and \$260,960.69 special damages). The court added punitive damages in the amount of \$500,000. Addressing the absence of financial evidence, it explained "Trujillo is estopped to complain about the lack of wealth evidence . . . which resulted from his own failure to comply with the discovery . . . ." Judgment was entered accordingly.

### DISCUSSION

Trujillo argues punitive damages cannot be awarded without evidence of his financial condition, and in any event, the award was excessive. We cannot agree.

The general rule is a plaintiff seeking punitive damages must introduce evidence of the defendant's financial condition, which is the basis for crafting an award that deters without being so disproportionate to the defendant's ability to pay that it is excessive. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110-112.) But there is an exception that applies here. Where the defendant disobeys an order to produce information showing his financial condition, he cannot object to a punitive damage award for lack of such evidence. (*Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597; see also *Caira v. Offner* (2005) 126 Cal.App.4th 12, 41.)

In *Davidov*, plaintiff secured a compensatory damage award and sought to conduct discovery into defendant's financial condition in support punitive damages. The trial court ordered defendant to produce at a hearing all records regarding his net worth and turn them over to plaintiff. Defendant showed up without any records, and argued punitive damages could not be awarded in the absence of any evidence of net worth. The court fixed the punitive award at four times compensatory damages. (*Mike Davidov Co. v. Issod, supra*, 78 Cal.App.4th at pp. 603-604.) When the same argument was raised on appeal, the court held it was waived. As it explained, "by failing to bring in any records which would reflect his financial condition, despite being ordered to do so . . . defendant has waived any right to complain of the lack of such evidence." (*Id.* at pp. 608-609.)

The same is true here. Trujillo waived any objection to the lack of evidence on his financial condition when he refused to respond to discovery inquiring into that issue. If we were to allow Trujillo to escape punitive damages by the simple expedient of refusing to produce financial information needed to fix such an award, it would allow him to flout a court order with impunity and undermine the legal process. This we cannot condone. There was no error in awarding Leyva punitive damages in this case.

Trujillo argues the *Davidov* exception is inapplicable because he was deported against his will, he did not willfully disobey the discovery order because he was not aware of it, and Leyva could have obtained financial information from third parties. We cannot agree.

The fact that Trujillo had been deported does not relieve him of the obligation to respond to discovery. He obviously knew of the action, since he had appeared, answered, and told his attorney he would like to settle. The burden was on Trujillo to maintain contact with counsel and respond to discovery in the case. One who ignores a pending legal action does so at his peril, and being out of the county – involuntarily or voluntarily – is no defense. Telephone calls can be made and letter sent. Airplanes are not unduly burdensome forms of transportation.

Trujillo asserts Leyva could have sought information about his finances from third parties, such as his former employer, his father, and his girlfriend or wife (the record is unclear which), or by a property search. But that misses the point. The waiver rule is based on refusal to obey a court order, and it does not require the rebuffed plaintiff to try other methods of discovery when a defendant refuses to obey the lawful order of a court. Moreover, the record indicates most of the actions suggested would have been futile. Trujillo was gone, so records of past earnings would not indicate current assets. And according to a declaration from Lemieux, Trujillo's father claimed to know nothing of his son's whereabouts nor that of his wife, suggesting his response would be the same if inquiry were made of Trujillo's assets. In any event, Trujillo cannot escape the consequences of his refusal to provide financial information with the rejoinder Leyva should have tried to obtain it by indirect, more arduous means.

Nor is this case analogous to *Cummings Medical Corp. v. Occupational Medical Corp.* (1992) 10 Cal.App.4th 1291, relied on by Trujillo. He contends the case stands for the proposition that financial evidence must be offered even where a defendant's answer is stricken for discovery abuse. We cannot read it that way. In *Cummings*, the trial court struck defendant's answer after his refusal to respond to any discovery at all. At a prove-up hearing, plaintiff offered evidence of defendant's profits from his fraudulent conduct. Punitive damages based on the profits of the fraud were upheld, the court explaining "where the defendant has been guilty of fraud, punitive damages may properly be based on evidence of the profitability of the defendant's misconduct." (*Id.* at p. 1298.) The case is easily distinguished. The refusal to provide financial information was not in issue there, and the present matter is not a fraud case where plaintiff can show defendant's profits as a basis for punitive damages. So *Cummings* does not support Trujillo's position.

Finally, Trujillo contends punitive damages were excessive. He reasons he was "already financially destroyed" by the compensatory award, claims to have earned

no more than \$30,000 per year, denies having a retirement account, and says his car was wrecked and still has an outstanding loan balance. (This last is, we must say, an astonishing display of chutzpah coming from the man who wrecked the car and killed Margaret Leyva in the process.) The point is completely devoid of merit.

Trujillo cannot claim poverty after refusing to provide information about his financial condition. And the present argument is just that: an argument – without a shred of evidentiary support. More significantly, we note the ratio of punitive damages (\$500,000) to compensatory damages (\$760,960.69) is approximately 0.66:1. Since this is less than a one-to-one ratio, it easily satisfies due process requirements. (See *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 425 [“in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”].) So the punitive damage award was not excessive.

Since Trujillo waived the requirement of financial evidence to support punitive damages when he disobeyed an order to produce such information, and the award was not excessive, the judgment appealed from is affirmed. Since Leyva did not file a brief in this court, there are no costs on appeal to award.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.